

**Management Advisory Report: Two Violations
of the Fair Debt Collection Practices Act
Resulted in Administrative Actions
(Fiscal Year 2002)**

May 2002

Reference Number: 2002-10-101

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

May 31, 2002

MEMORANDUM FOR DEPUTY COMMISSIONER
CHIEF COUNSEL

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Management Advisory Report: Two Violations of the Fair
Debt Collection Practices Act Resulted in Administrative Actions
(Fiscal Year 2002) (Audit # 200210016)

This report presents the results of our Fiscal Year 2002 Fair Debt Collection Practices Act (FDCPA)¹ review. The overall objective of this review was to obtain information on the Internal Revenue Service's (IRS) administrative and civil actions resulting from FDCPA violations by IRS employees. Section 1102 (d)(1)(G) of the IRS Restructuring and Reform Act of 1998 (RRA 98)² requires the Treasury Inspector General for Tax Administration to include in one of its semiannual reports to the Congress information regarding any administrative or civil actions related to violations of the FDCPA. The semiannual report must provide a summary of such actions and include any judgments or awards granted.

In summary, we found two violations of the FDCPA reported by IRS management that resulted in administrative actions against employees. However, there were no civil actions that resulted in the IRS paying monetary settlements to taxpayers because of an FDCPA violation.

Management's Response:

¹ 15 U.S.C. §§ 1601 note, & 1692-1692o (1994 & Supp. IV 1998).

² Pub. L. No. 105-206, 112 Stat. 703 § 1102 (d)(1)(G).

IRS management agreed with the observations in our discussion draft report. Management's complete response to the discussion draft report is included as Appendix V.

Copies of this report are also being sent to the IRS managers who are affected by the report. Please contact me at (202) 622-6510 if you have any questions or Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

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Background

Section 1102 (d)(1)(G) of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98)¹ requires the Treasury Inspector General for Tax Administration to include in one of its semiannual reports to the Congress information regarding any administrative or civil actions related to Fair Debt Collection Practices Act (FDCPA)² violations. The semiannual report must provide a summary of such actions and include any judgments or awards granted.

The IRS' definition of administrative action includes disciplinary actions ranging from admonishment through removal. Lesser actions, such as oral or written counseling, are not considered administrative actions. We used the IRS' definition of administrative actions when determining the number of FDCPA violations to be reported to the Congress.

As originally enacted, the FDCPA included provisions that restricted various collection abuses and harassment in the private sector. These restrictions did not apply to federal government practices. However, the Congress believes that it is appropriate to require the IRS to comply with applicable portions of the FDCPA and to be at least as considerate to taxpayers as private creditors are required to be with their customers (see Appendix IV for a detailed description of the FDCPA provisions).

Taxpayer complaints about IRS employees' conduct can be reported to several IRS functions for tracking on management information systems. If a taxpayer files a civil action or if IRS management determines that the taxpayer's FDCPA rights were potentially violated, the complaint could be referred and tracked on one or both of the following IRS systems:

- Office of Workforce Relations' Automated Labor and Employee Relations Tracking System (ALERTS), which

¹ Pub. L. No. 105-206, 112 Stat. 703 § 1102 (d)(1)(G).

² 15 U.S.C. §§ 1601 note, & 1692-1692o (1994 & Supp. IV 1998).

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generally tracks employee behavior that may warrant IRS management administrative actions.

- Office of the Chief Counsel's Counsel Automated System Environment (CASE), which is an inventory control system that tracks items such as taxpayer civil actions or bankruptcies.

The IRS implemented FDCPA codes on the ALERTS in March 1999 and on the CASE in June 1999.

For this Fiscal Year (FY) 2002 review, we analyzed closed cases from the ALERTS to identify violations of the FDCPA. However, we cannot ensure that cases recorded on the ALERTS encompass all FDCPA violations. As stated in our FY 2000 report on the FDCPA,³ data captured on the ALERTS related to potential FDCPA violations may not always be complete and accurate. During this FY 2002 review, we also did not determine the accuracy or consistency of disciplinary actions taken against employees for FDCPA violations reported to the Workforce Relations function. Fieldwork was performed in the Strategic Human Resources, Agency-Wide Shared Services, and Chief Counsel functions in the IRS National Headquarters during the period February to April 2002. This review was performed in accordance with the President's Council on Integrity and Efficiency's *Quality Standards for Inspections*.

Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

To determine if any FDCPA violations resulted in an administrative action, we reviewed cases from the ALERTS coded as potential FDCPA violations that were opened after July 22, 1998, and closed during the period January 1 through December 31, 2001. Our review of all 52 cases coded as FDCPA violations identified 2 FDCPA violations

**Two Fair Debt Collection
Practices Act Violations
Resulted in Administrative
Actions**

³ *The Identification and Reporting of Potential Fair Debt Collection Practices Act Violations Can Be Improved* (Reference Number 2000-10-109, dated August 2000).

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that occurred after July 22, 1998, and resulted in administrative actions being taken against employees.

In one case, the IRS employee contacted the taxpayer without the consent of the taxpayer's representative. The employee contacted the taxpayer on a Saturday, which is considered an unusual time (non-business day). Based upon this action, as well as the use of inappropriate language with the taxpayer, the employee received an official letter of reprimand.

In the second case, the IRS employee also directly contacted the taxpayer without the consent of the taxpayer's representative. When contacted by the representative, the employee exhibited rude and discourteous behavior. As a result, the employee was given an official letter of admonishment.

In addition, IRS employees received written counseling for FDCPA violations in two other cases closed during our audit period (direct contact of the taxpayer without the representative's consent and rude behavior, respectively). Such conduct, as exhibited in these four cases, impairs the ability of the IRS from meeting its mission of providing top-quality customer service to taxpayers.

**No Fair Debt Collection
Practices Act Civil Actions
Resulted in a Monetary
Settlement to a Taxpayer**

During the period January 1 through December 31, 2001, there were no cases closed on the CASE in which the IRS paid any money to taxpayers for civil actions resulting from FDCPA violations. The CASE included one closed civil action coded as FDCPA during the period of this review. However, our review of the case documentation indicated that the alleged FDCPA violation occurred prior to enactment of the RRA 98 (July 22, 1998). As a result, the FDCPA provision did not apply to the IRS at the time of the alleged violation.

Management's Response: IRS management agreed with the observations in our discussion draft report and is initiating action to assure that the identification and reporting of FDCPA cases continues to be effectively monitored.

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Appendix I

Detailed Objective, Scope, and Methodology

The objective of this review was to obtain information on Internal Revenue Service (IRS) administrative and civil actions resulting from violations of the Fair Debt Collection Practices Act (FDCPA)¹ by IRS employees. Specifically, we:

- I. Determined the number of FDCPA violations resulting in administrative actions.
 - A. Obtained a computer extract from the Automated Labor and Employee Relations Tracking System of the 52 cases that were opened after July 22, 1998, and closed during the period January 1 through December 31, 2001, coded as FDCPA violations.
 - B. Determined if any cases involving FDCPA violations resulted in an administrative action.
- II. Determined the number of FDCPA violations resulting in IRS civil actions (judgments and awards granted).
 - A. Obtained a computer extract from the Counsel Automated System Environment of the one Subcategory 511 (established to track FDCPA violations) case opened after July 22, 1998, and closed during the period January 1 through December 31, 2001.

¹ 15 U.S.C. §§ 1601 note, & 1692-1692o (1994 & Supp. IV 1998).

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Appendix II

Major Contributors to This Report

Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs)

Nancy Nakamura, Director

Jeffrey M. Jones, Audit Manager

Deadra M. English, Senior Auditor

Donald J. Martineau, Auditor

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Appendix III

Report Distribution List

Commissioner N:C
Chief, Agency-Wide Shared Services A
Director, Strategic Human Resources N:ADC:H
Associate Chief Counsel (Procedure and Administration) CC:P&A
Director, Office of Workforce Relations N:ADC:H:R
Director, Personnel Services A:PS
National Taxpayer Advocate TA
Director, Office of Program Evaluation and Risk Analysis N:ADC:R:O
Office of Management Controls N:CFO:F:M
Director, Legislative Affairs CL:LA
Audit Liaisons:
 Chief, Agency-Wide Shared Services A
 Chief Counsel CC
 Director, Strategic Human Resources N:ADC:H
 Associate Chief Counsel (Procedure and Administration) CC:P&A
 Director, Office of Workforce Relations N:ADC:H:R

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Appendix IV

Fair Debt Collection Practices Act Provisions

To ensure equitable treatment among debt collectors in the public and private sectors, the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98)¹ requires the IRS to comply with certain provisions of the Fair Debt Collection Practices Act.² Specifically, the IRS may not communicate with taxpayers in connection with the collection of any unpaid tax:

- At unusual or inconvenient times.
- If the IRS knows that the taxpayer has obtained representation from a person authorized to practice before the IRS, and the IRS knows or can easily obtain the representative's name and address.
- At the taxpayer's place of employment, if the IRS knows or has reason to know that such communication is prohibited.

Further, the IRS may not harass, oppress, or abuse any person in connection with any tax collection activity or engage in any activity that would naturally lead to harassment, oppression, or abuse. Such conduct specifically includes, but is not limited to, the:

- Use or threat of violence or harm.
- Use of obscene or profane language.
- Causing a telephone to ring continuously with harassing intent.
- Placement of telephone calls without meaningful disclosure of the caller's identity.

¹ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

² 15 U.S.C. §§ 1601 note, & 1692-1692o (1994 & Supp. IV 1998).

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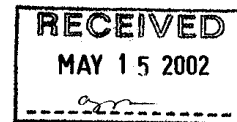
Appendix V

Management's Response to the Discussion Draft Report



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAY 10 2002



MEMORANDUM FOR DANIEL R. DEVLIN

ASSISTANT INSPECTOR GENERAL FOR AUDIT
(HEADQUARTERS OPERATIONS AND EXEMPT
ORGANIZATIONS PROGRAMS)

FROM: Ronald P. Sanders
Chief Human Resource Officer

SUBJECT: Discussion Draft Management Advisory Report: Two Violations
of the Fair Debt Collection Practices Act Resulted in
Administrative Actions (Fiscal Year 2002) (Audit #200210016)

As requested, the draft advisory report on Fair Debt Collection Practices Act (FDCPA) violations was reviewed by the Office of Agency-Wide Shared Services, the Office of Chief Counsel and the Workforce Relations Division in Strategic Human Resources. We consider it to be accurate and complete and are in agreement with its findings and we see no information in the report that would warrant protection under FOIA. Although no actions are required, we are initiating action with our business units and our Labor Relations staff to assure that our identification and reporting of FDCPA related cases continues to be effectively monitored.

Your efforts and time in preparing the report are appreciated. We appreciate the opportunity to review and comment on the draft report. If there are any questions, please feel free to contact me at (202) 283-9200.